

111TH CONGRESS
2D SESSION

H. R. 5413

To authorize the Pechanga Band of Luiseno Mission Indians Water Rights Settlement, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2010

Mr. BACA (for himself, Mr. KILDEE, Mr. GRIJALVA, Mr. BOREN, Ms. RICHARDSON, Mr. HONDA, and Mr. LUJÁN) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To authorize the Pechanga Band of Luiseno Mission Indians Water Rights Settlement, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Pechanga Band of Luiseño Mission Indians Water
6 Rights Settlement Act of 2010”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
8 this Act is as follows:

Sec. 1. Short title.

Sec. 2. Purposes.

Sec. 3. Definitions.

Sec. 4. Approval of the Pechanga Settlement Agreement.

- Sec. 5. Tribal Water Right.
- Sec. 6. Satisfaction of claims.
- Sec. 7. Waiver of claims.
- Sec. 8. Water facilities.
- Sec. 9. Pechanga Settlement Fund.
- Sec. 10. Miscellaneous provisions.
- Sec. 11. Authorization of appropriations.
- Sec. 12. Repeal on failure of enforceability date.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to achieve a fair, equitable, and final settle-
4 ment of claims to water rights and certain claims for
5 injuries to water rights in the Santa Margarita
6 River Watershed for—

7 (A) the Band; and

8 (B) the United States acting in its capac-
9 ity as trustee for the Band and Allottees;

10 (2) to achieve a fair, equitable, and final settle-
11 ment of certain claims by the Band against the
12 United States;

13 (3) to authorize, ratify, and confirm the
14 Pechanga Settlement Agreement to be entered into
15 by the Band, RCWD, EMWD, and the United
16 States;

17 (4) to authorize and direct the Secretary—

18 (A) to execute the Pechanga Settlement
19 Agreement; and

1 (B) to take any other action necessary to
2 carry out the Pechanga Settlement Agreement
3 in accordance with this Act; and

4 (5) to authorize the appropriation of funds nec-
5 essary for the implementation of the Pechanga Set-
6 tlement Agreement and this Act.

7 **SEC. 3. DEFINITIONS.**

8 In this Act—

9 (1) **ADJUDICATION COURT.**—The term “Adju-
10 dication Court” means the United States District
11 Court for the Southern District of California exer-
12 cising continuing jurisdiction over the Adjudication
13 Proceeding.

14 (2) **ADJUDICATION PROCEEDING.**—The term
15 “Adjudication Proceeding” means litigation initiated
16 by the United States regarding relative water rights
17 in the Santa Margarita River Watershed in United
18 States v. Fallbrook Public Utility District et al., Civ.
19 No. 3:51–cv–01247 (S.D.C.A.), including any litiga-
20 tion initiated to interpret or enforce the relative
21 water rights in the Santa Margarita River Water-
22 shed pursuant to the Adjudication Court’s con-
23 tinuing jurisdiction over the Fallbrook Decree.

24 (3) **AFY.**—The term “AFY” means acre-feet
25 per year.

1 (4) ALLOTTEE.—The term “allottee” means a
2 person who holds a beneficial real property interest
3 in an Indian allotment that is—

4 (A) located within the Reservation; and

5 (B) held in trust by the United States.

6 (5) BAND.—The term “Band” means the sov-
7 ereign government of the Pechanga Band of Luiseño
8 Mission Indians, which is organized under section 16
9 of the Act of June 18, 1934 (25 U.S.C. 476), acting
10 on behalf of itself and its members.

11 (6) BRINE DISPOSAL FACILITY NOTICE.—The
12 term “Brine Disposal Facility Notice” has the
13 meaning set forth in section 5 of the Recycled Water
14 Infrastructure Agreement.

15 (7) CLAIMS.—The term “claims” means rights,
16 claims, demands, actions, compensation, or causes of
17 action whether known or unknown as of June 30,
18 2009.

19 (8) DEMINERALIZATION AND BRINE DISPOSAL
20 PROJECT.—The term “Demineralization and Brine
21 Disposal Project” has the meaning set forth in sec-
22 tion 1 of the Recycled Water Infrastructure Agree-
23 ment.

24 (9) EMWD.—The term “EMWD” means East-
25 ern Municipal Water District, a municipal water dis-

1 trict organized and existing in accordance with the
2 Municipal Water District Law of 1911, Division 20
3 of the Water Code of the State of California, as
4 amended.

5 (10) EMWD CONNECTION FEE.—The term
6 “EMWD Connection Fee” has the meaning set forth
7 in section 2.3(b) of the Extension of Service Area
8 Agreement.

9 (11) ENFORCEABILITY DATE.—The term “en-
10 forceability date” means the date on which the Sec-
11 retary publishes in the Federal Register the state-
12 ment of findings described in section 7(f).

13 (12) ESAA CAPACITY AGREEMENT.—The term
14 “ESAA Capacity Agreement” means the “Agree-
15 ment to Provide Capacity for Delivery of ESAA
16 Water”, among the Band, RCWD, and the United
17 States.

18 (13) ESAA WATER.—The term “ESAA Water”
19 means imported potable water that the Band re-
20 ceives from EMWD and MWD pursuant to the Ex-
21 tension of Service Area Agreement.

22 (14) EXTENSION OF SERVICE AREA AGREE-
23 MENT.—The term “Extension of Service Area
24 Agreement” means the “Agreement for Extension of
25 Existing Service Area”, among the Band, EMWD,

1 the United States, and MWD for purposes of provi-
2 sion of water service by EMWD to a designated por-
3 tion of the Reservation using water supplied by
4 MWD.

5 (15) FALLBROOK DECREE.—The term
6 “Fallbrook Decree” means the “Modified Final
7 Judgment And Decree”, entered in the Adjudication
8 Proceeding on April 6, 1966. The term “Fallbrook
9 Decree” includes all court orders, interlocutory judg-
10 ments, and decisions supplemental to the “Modified
11 Final Judgment And Decree”, including Interlocu-
12 tory Judgment No. 30, Interlocutory Judgment No.
13 35, and Interlocutory Judgment No. 41.

14 (16) INDIAN TRIBE.—The term “Indian tribe”
15 has the meaning given the term in section 4 of the
16 Indian Self-Determination and Education Assistance
17 Act (25 U.S.C. 450b).

18 (17) INJURY TO WATER RIGHTS.—The term
19 “Injury to Water Rights” means an interference
20 with, diminution of, or deprivation of water rights
21 under Federal or State law.

22 (18) INTERIM CAPACITY.—The term “Interim
23 Capacity” has the meaning set forth in section 1 of
24 the ESAA Capacity Agreement.

1 (19) INTERIM CAPACITY NOTICE.—The term
2 “Interim Capacity Notice” has the meaning set
3 forth in section 4(b) of the ESAA Capacity Agree-
4 ment.

5 (20) MWD.—The term “MWD” means the
6 Metropolitan Water District of Southern California,
7 a metropolitan water district organized and incor-
8 porated under the Metropolitan Water District Act
9 of the State of California (Stats. 1969, Chapter 209,
10 as amended).

11 (21) MWD CONNECTION FEE.—The term
12 “MWD Connection Fee” has the meaning set forth
13 in section 2.3(a) of the Extension of Service Area
14 Agreement.

15 (22) PECHANGA ESAA DELIVERY CAPACITY AC-
16 COUNT.—The term “Pechanga ESAA Delivery Ca-
17 pacity Account” means the fund authorized by sec-
18 tion 11(a)(2) of this Act.

19 (23) PECHANGA RECYCLED WATER INFRA-
20 STRUCTURE ACCOUNT.—The term “Pechanga Recy-
21 cled Water Infrastructure Account” means the fund
22 authorized by section 11(a)(1) of this Act.

23 (24) PECHANGA SETTLEMENT AGREEMENT.—
24 The term “Pechanga Settlement Agreement” means
25 that agreement, together with the exhibits thereto.

1 The parties to the Pechanga Settlement Agreement
2 are the Band, the United States on behalf of the
3 Band, its members and allottees, RCWD, and
4 EMWD.

5 (25) PECHANGA SETTLEMENT FUND.—The
6 term “Pechanga Settlement Fund” means the fund
7 authorized by section 9 of this Act.

8 (26) PECHANGA WATER CODE.—The term
9 “Pechanga Water Code” means a water code to be
10 adopted by the Band in accordance with section 5(f).

11 (27) PECHANGA WATER FUND ACCOUNT.—The
12 term “Pechanga Water Fund Account” means the
13 fund authorized by section 11(a)(3) of this Act.

14 (28) PERMANENT CAPACITY.—The term “Per-
15 manent Capacity” has the meaning set forth in sec-
16 tion 1 of the ESAA Capacity Agreement.

17 (29) PERMANENT CAPACITY NOTICE.—The
18 term “Permanent Capacity Notice” has the meaning
19 set forth in section 5(b) of the ESAA Capacity
20 Agreement.

21 (30) RCWD.—The term “RCWD” means the
22 California water district organized pursuant to Cali-
23 fornia Water code section 34000 et seq. and includes
24 all real property owners for whom RCWD acts as an
25 agent pursuant to an agency agreement.

1 (31) RECYCLED WATER INFRASTRUCTURE
2 AGREEMENT.—The term “Recycled Water Infra-
3 structure Agreement” means the “Agreement for
4 Recycled Water Infrastructure” among the Band,
5 RCWD, and the United States.

6 (32) RECYCLED WATER TRANSFER AGREE-
7 MENT.—The term “Recycled Water Transfer Agree-
8 ment” means the “Recycled Water Transfer Agree-
9 ment” between the Band and RCWD.

10 (33) RESERVATION.—The term “Reservation”
11 means land depicted on the map attached to the
12 Pechanga Settlement Agreement as exhibit I. The
13 term “Reservation” is solely for the purposes of the
14 Pechanga Settlement Agreement only, and not for
15 any of the exhibits, and shall not be used for any
16 other purpose.

17 (34) SANTA MARGARITA RIVER WATERSHED.—
18 The term “Santa Margarita River Watershed”
19 means the watershed that is the subject of the Adju-
20 dication Proceeding and the Fallbrook Decree.

21 (35) SECRETARY.—The term “Secretary”
22 means the Secretary of the United States Depart-
23 ment of the Interior.

24 (36) STATE.—The term “State” means the
25 State of California.

1 (37) STORAGE POND.—The term “Storage
2 Pond” has the meaning set forth in section 1 of the
3 Recycled Water Infrastructure Agreement.

4 (38) TRIBAL WATER RIGHT.—The term “Tribal
5 Water Right” means the water rights ratified, con-
6 firmed, and declared to be valid for the benefit of
7 the Band and allottees as specifically set forth and
8 described in section 5 of the Act.

9 **SEC. 4. APPROVAL OF THE PECHANGA SETTLEMENT**
10 **AGREEMENT.**

11 (a) IN GENERAL.—Except as modified by this Act,
12 and to the extent the Pechanga Settlement Agreement
13 does not conflict with this Act, the Pechanga Settlement
14 Agreement is authorized, ratified, and confirmed. To the
15 extent amendments are executed to make the Pechanga
16 Settlement Agreement consistent with this Act, such
17 amendments are also authorized, ratified, and confirmed.

18 (b) EXECUTION OF PECHANGA SETTLEMENT AGREE-
19 MENT.—To the extent that the Pechanga Settlement
20 Agreement does not conflict with this Act, the Secretary
21 is directed to and shall promptly execute the Pechanga
22 Settlement Agreement, including all exhibits to or parts
23 of the Pechanga Settlement Agreement requiring the sig-
24 nature of the Secretary. Nothing herein precludes the Sec-
25 retary from approving modifications to exhibits to the

1 Pechanga Settlement Agreement not inconsistent with this
2 Act, to the extent such modifications do not otherwise re-
3 quire Congressional approval pursuant to the Trade and
4 Intercourse Act, 25 U.S.C. 177, or pursuant to other Fed-
5 eral statute.

6 (c) NATIONAL ENVIRONMENTAL POLICY ACT OF
7 1969.—

8 (1) ENVIRONMENTAL COMPLIANCE.—In imple-
9 menting the Pechanga Settlement Agreement, the
10 Secretary shall promptly comply with all applicable
11 aspects of the National Environmental Policy Act of
12 1969 (42 U.S.C. 4321 et seq.), the Endangered Spe-
13 cies Act of 1973 (16 U.S.C. 1531 et seq.), and all
14 other applicable environmental Acts and regulations.

15 (2) EXECUTION OF THE PECHANGA SETTLE-
16 MENT AGREEMENT.—Execution of the Pechanga
17 Settlement Agreement by the Secretary under this
18 section shall not constitute a major Federal action
19 under the National Environmental Policy Act of
20 1969 (42 U.S.C. 4321 et seq.). The Secretary is di-
21 rected to carry out all Federal compliance necessary
22 to implement the Pechanga Settlement Agreement.

23 (3) LEAD AGENCY.—The Bureau of Reclama-
24 tion shall be designated as the lead agency with re-
25 spect to environmental compliance.

1 **SEC. 5. TRIBAL WATER RIGHT.**

2 (a) INTENT OF CONGRESS.—It is the intent of Con-
3 gress to provide to each allottee benefits that are equiva-
4 lent to or exceed the benefits allottees currently possess,
5 taking into consideration—

6 (1) the potential risks, cost, and time delay as-
7 sociated with litigation that would be resolved by the
8 Pechanga Settlement Agreement and this Act;

9 (2) the availability of funding under this Act;

10 (3) the availability of water from the Tribal
11 Water Right and other water sources as set forth in
12 the Pechanga Settlement Agreement; and

13 (4) the applicability of section 7 of the Act of
14 February 8, 1887 (25 U.S.C. 381) and this Act to
15 protect the interests of allottees.

16 (b) CONFIRMATION OF TRIBAL WATER RIGHT.—

17 (1) IN GENERAL.—The Tribal Water Right is
18 ratified, confirmed, and declared to be valid.

19 (2) CHARACTERISTICS OF TRIBAL WATER
20 RIGHT.—The Tribal Water Right shall be equal to
21 4,994 AFY of water that is subject to the jurisdic-
22 tion of the Adjudication Court. The priority date for
23 3,019 AFY of the Tribal Water Right shall be June
24 27, 1882. The priority date for 182 AFY of the
25 Tribal Water Right shall be August 29, 1893. The
26 priority date for 729 AFY of the Tribal Water Right

1 shall be January 9, 1907. The priority date for 563
2 AFY of the Tribal Water Right shall be March 11,
3 1907. The priority date for 501 AFY of the Tribal
4 Water Right shall be May 25, 1931.

5 (3) USE.—Subject to the terms of the
6 Pechanga Settlement Agreement, this Act, and the
7 Fallbrook Decree, the Band may use the Tribal
8 Water Right for any purpose on the Reservation.

9 (c) HOLDING IN TRUST.—The Tribal Water Right
10 shall be held in trust by the United States for the use
11 and benefit of the Band and the allottees in accordance
12 with this section.

13 (d) ALLOTTEES.—As specified in and provided for in
14 this Act:

15 (1) APPLICABILITY OF ACT OF FEBRUARY 8,
16 1887.—The provisions of section 7 of the Act of Feb-
17 ruary 8, 1887 (25 U.S.C. 381), relating to the use
18 of water for irrigation purposes shall apply to the
19 Tribal Water Right.

20 (2) ENTITLEMENT TO WATER.—Any entitle-
21 ment to water of an allottee under Federal law for
22 such allottee's allotment shall be satisfied by the
23 Band and no allottee shall have any additional enti-
24 tlement to water except as set forth in the Pechanga
25 Settlement Agreement and this Act.

1 (3) EXHAUSTION OF REMEDIES.—Before as-
2 serting any claim against the United States under
3 section 7 of the Act of February 8, 1887 (25 U.S.C.
4 381), or any other applicable law, an allottee shall
5 exhaust remedies available under the Pechanga
6 Water Code or other applicable tribal law.

7 (4) CLAIMS.—Following exhaustion of remedies
8 available under the Pechanga Water Code or other
9 applicable tribal law, an allottee may seek relief
10 under section 7 of the Act of February 8, 1887 (25
11 U.S.C. 381), or other applicable law.

12 (5) AUTHORITY.—The Secretary shall have the
13 authority to protect allottees’ rights as specified in
14 this section.

15 (e) AUTHORITY OF BAND.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), the Band shall have authority to use, al-
18 locate, distribute, and lease the Tribal Water Right
19 in accordance with—

20 (A) the Pechanga Settlement Agreement;

21 and

22 (B) applicable Federal law.

23 (2) LEASES BY ALLOTTEES.—Notwithstanding
24 paragraph (1), an allottee may lease any interest in

1 land held by the allottee, together with any water
2 right appurtenant to such interest in land.

3 (f) PECHANGA WATER CODE.—

4 (1) IN GENERAL.—No later than 18 months
5 following the enforceability date, the Band shall
6 enact a Pechanga Water Code that provides for—

7 (A) the management, regulation, and gov-
8 ernance of all uses of the Tribal Water Right
9 in accordance with the Pechanga Settlement
10 Agreement; and

11 (B) establishment by the Band of condi-
12 tions, permit requirements, and other limita-
13 tions relating to the storage, recovery, and use
14 of the Tribal Water Right in accordance with
15 the Pechanga Settlement Agreement.

16 (2) INCLUSIONS.—The Pechanga Water Code
17 shall provide that—

18 (A) tribal allocations of water to allottees
19 shall be satisfied with water from the Tribal
20 Water Right;

21 (B) charges for delivery of water for irriga-
22 tion purposes for allottees shall be assessed in
23 accordance with section 7 of the Act of Feb-
24 ruary 8, 1887 (25 U.S.C. 381);

1 (C) there is a process by which an allottee
2 may request that the Band provide water for ir-
3 rigation use in accordance with this Act;

4 (D) there is a due process system for the
5 consideration and determination by the Band of
6 any request by an allottee, or any successor in
7 interest to an allottee, for an allocation of such
8 water for irrigation purposes on allotted land,
9 including a process for—

10 (i) appeal and adjudication of any de-
11 nied or disputed distribution of water; and

12 (ii) resolution of any contested admin-
13 istrative decision; and

14 (E) there is a requirement that any allot-
15 tee with a claim relating to the enforcement of
16 rights of the allottee under the Pechanga Water
17 Code or relating to the amount of water allo-
18 cated to land of the allottee must first exhaust
19 remedies available to the allottee under tribal
20 law and the Pechanga Water Code before initi-
21 ating an action against the United States or pe-
22 titioning the Secretary pursuant to subsection
23 (d)(4).

24 (3) ACTION BY SECRETARY.—

1 (A) IN GENERAL.—The Secretary shall ad-
2 minister the Tribal Water Right until the
3 Pechanga Water Code is enacted in accordance
4 with paragraph (1) and those provisions requir-
5 ing approval pursuant to paragraph (2).

6 (B) APPROVAL.—The Pechanga Water
7 Code shall not be valid unless—

8 (i) the provisions of the Pechanga
9 Water Code required by paragraph (2) are
10 approved by the Secretary; and

11 (ii) each amendment to the Pechanga
12 Water Code that affects a right of an allot-
13 tee is approved by the Secretary.

14 (C) APPROVAL PERIOD.—

15 (i) IN GENERAL.—Except as provided
16 by clause (ii), if the Secretary does not ap-
17 prove or disapprove the Pechanga Water
18 Code before the date that is 180 days after
19 the date on which the Pechanga Water
20 Code is submitted to the Secretary for ap-
21 proval, the Pechanga Water Code shall be
22 considered to have been approved by the
23 Secretary to the extent that it is not incon-
24 sistent with the Pechanga Settlement
25 Agreement or this Act.

1 (ii) MUTUAL EXTENSION OF AP-
2 PROVAL PERIOD.—The Pechanga Water
3 Code may not be considered to have been
4 approved by the Secretary under clause (i)
5 if the Secretary and the Band agree to ex-
6 tend the approval period.

7 (g) EFFECT.—Except as otherwise specifically pro-
8 vided in this section, nothing in this Act—

9 (1) authorizes any action by an allottee against
10 any individual or entity, or against the Band, under
11 Federal, State, tribal, or local law; or

12 (2) alters or affects the status of any action
13 pursuant to section 1491(a) of title 28, United
14 States Code.

15 **SEC. 6. SATISFACTION OF CLAIMS.**

16 (a) IN GENERAL.—The benefits provided to the Band
17 and the allottees under the Pechanga Settlement Agree-
18 ment and this Act shall satisfy all claims of the Band and
19 the allottees waived pursuant to section 7.

20 (b) NO RECOGNITION OF WATER RIGHTS.—Notwith-
21 standing subsection (a) and except as provided in section
22 5(d), nothing in this Act recognizes or establishes any
23 right of a member of the Band or an allottee to water
24 within the Reservation.

1 **SEC. 7. WAIVER OF CLAIMS.**

2 (a) IN GENERAL.—

3 (1) WAIVER OF CLAIMS BY THE BAND AND THE
4 UNITED STATES.—

5 (A) Subject to the retention of rights set
6 forth in subsection (c), notwithstanding any
7 provisions to the contrary in the Pechanga Set-
8 tlement Agreement, and in return for the ratifi-
9 cation, confirmation, and declaration to be valid
10 of the Tribal Water Right and other benefits,
11 including the commitments by RCWD and
12 EMWD as set forth in the Pechanga Settlement
13 Agreement and this Act, the Band, and the
14 United States on behalf of the Band and
15 allottees are authorized to execute waivers for
16 any and all of the following claims:

17 (i) Claims for water rights in the
18 Santa Margarita River Watershed for
19 lands located within the Reservation aris-
20 ing from time immemorial and, thereafter,
21 forever.

22 (ii) Claims for water rights in the
23 Santa Margarita River Watershed that are
24 based on aboriginal occupancy for lands
25 overlying the Santa Margarita River Wa-

1 tershed arising from time immemorial and,
2 thereafter, forever.

3 (B) Subject to the retention of rights set
4 forth in subsection (c), notwithstanding any
5 provisions to the contrary in the Pechanga Set-
6 tlement Agreement, and in return for the ratifi-
7 cation, confirmation, and declaration to be valid
8 of the Tribal Water Right and other benefits,
9 including the commitments by RCWD and
10 EMWD as set forth in the Pechanga Settlement
11 Agreement and this Act, the Band and the
12 United States on behalf of the Band and
13 allottees fully release, acquit and discharge
14 RCWD and EMWD from the following claims:

15 (i) Claims for Injuries to Water
16 Rights in the Santa Margarita River Wa-
17 tershed for lands located within the Res-
18 ervation arising or occurring at any time
19 up to and including June 30, 2009.

20 (ii) Claims for Injuries to Water
21 Rights in the Santa Margarita River Wa-
22 tershed for lands located within the Res-
23 ervation arising or occurring at any time
24 after June 30, 2009, resulting from the di-
25 version or use of water in a manner not in

1 violation of the Pechanga Settlement
2 Agreement or this Act.

3 (iii) Claims for subsidence damage to
4 land located within the Reservation arising
5 or occurring at any time up to and includ-
6 ing June 30, 2009.

7 (iv) Claims for subsidence damage
8 arising or occurring after June 30, 2009,
9 to lands located within the Reservation re-
10 sulting from the diversion of underground
11 water in a manner not in violation of the
12 Pechanga Settlement Agreement or this
13 Act.

14 (v) Claims arising out of or relating in
15 any manner to the negotiation or execution
16 of the Pechanga Settlement Agreement or
17 the negotiation or execution of this Act.

18 (2) CLAIMS BY THE UNITED STATES AGAINST
19 THE BAND.—Subject to the retention of rights set
20 forth in subsection (c), to the extent consistent with
21 this Act, the United States, in all its capacities (ex-
22 cept as trustee for an Indian tribe other than the
23 Band), as part of the performance of obligations
24 under the Pechanga Settlement Agreement, is au-
25 thorized to execute a waiver and release of any and

1 all claims against the Band, or any agency, official,
2 or employee of the Band, under Federal, State, or
3 any other law for—

4 (A) claims for Injuries to Water Rights in
5 the Santa Margarita River Watershed for lands
6 located within the Reservation arising or occur-
7 ring at any time up to and including June 30,
8 2009;

9 (B) claims for Injuries to Water Rights in
10 the Santa Margarita River Watershed for lands
11 located within the Reservation arising or occur-
12 ring at any time after June 30, 2009, resulting
13 from the diversion or use of water in a manner
14 not in violation this Agreement or the Act;

15 (C) claims for subsidence damage to land
16 located within the Reservation arising or occur-
17 ring at any time up to and including June 30,
18 2009;

19 (D) claims for subsidence damage arising
20 or occurring after June 30, 2009, to lands lo-
21 cated within the Reservation resulting from the
22 diversion of underground water in a manner not
23 in violation of this Agreement or the Act; and

24 (E) claims arising out of or relating in any
25 manner to the negotiation or execution of the

1 Pechanga Settlement Agreement or the negotia-
2 tion or execution of the Act.

3 (3) CLAIMS BY THE BAND AGAINST THE
4 UNITED STATES.—Subject to the retention of rights
5 set forth in subsection (c), the Band, on behalf of
6 itself and its members, is authorized to execute a
7 waiver and release of—

8 (A) all claims against the United States,
9 its agencies, or employees relating to claims for
10 water rights in or water of the Santa Margarita
11 River Watershed that the United States acting
12 in its capacity as trustee for the Band asserted,
13 or could have asserted, in any proceeding, in-
14 cluding but not limited to the Adjudication Pro-
15 ceeding;

16 (B) all claims against the United States,
17 its agencies, or employees relating to damages,
18 losses, or injuries to water, water rights, land,
19 or natural resources due to loss of water or
20 water rights (including but not limited to dam-
21 ages, losses or injuries to hunting, fishing,
22 gathering, or cultural rights due to loss of
23 water or water rights; claims relating to inter-
24 ference with, diversion or taking of water or
25 water rights; or claims relating to failure to

1 protect, acquire, replace, or develop water,
2 water rights or water infrastructure) in the
3 Santa Margarita River Watershed that first ac-
4 crued at any time up to and including June 30,
5 2009;

6 (C) all claims against the United States,
7 its agencies, or employees encompassed within
8 the case Pechanga Band of Luiseño Indians v.
9 Salazar, Civ. No. 1:06-cv-02206 (D.D.C);

10 (D) all claims against the United States,
11 its agencies, or employees relating to the pend-
12 ing litigation of claims relating to the Band's
13 water rights in the Adjudication Proceeding;
14 and

15 (E) all claims against the United States,
16 its agencies, or employees relating to the nego-
17 tiation, execution, or adoption of the Pechanga
18 Settlement Agreement, exhibits thereto, or this
19 Act.

20 (b) EFFECTIVENESS OF WAIVERS AND RELEASES.—

21 The waivers under subsection (a) shall take effect on the
22 enforceability date.

23 (c) RESERVATION OF RIGHTS AND RETENTION OF
24 CLAIMS.—Notwithstanding the waivers and releases au-
25 thorized in this Act, the Band on behalf of itself and its

1 members, and the United States acting in its capacity as
2 trustee for the Band and allottees retain—

3 (1) claims for enforcement of the Pechanga Set-
4 tlement Agreement and this Act;

5 (2) claims against persons other than RCWD
6 and EMWD;

7 (3) claims for water rights that are outside the
8 jurisdiction of the Adjudication Court;

9 (4) claims for water rights for lands within the
10 Santa Margarita River Watershed that are outside
11 the Reservation; provided, however, that such claims
12 are for water rights consistent with water rights rec-
13 ognized for such lands in the Fallbrook Decree;

14 (5) rights to use and protect water rights ac-
15 quired on or after the enforceability date; and

16 (6) remedies, privileges, immunities, powers,
17 and claims, including claims for water rights, not
18 specifically waived and released pursuant to this Act
19 and the Pechanga Settlement Agreement.

20 (d) EFFECT OF PECHANGA SETTLEMENT AGREE-
21 MENT AND ACT.—Nothing in the Pechanga Settlement
22 Agreement or this Act—

23 (1) affects the ability of the United States act-
24 ing in its sovereign capacity to take actions author-
25 ized by law, including but not limited to any laws re-

1 lating to health, safety, or the environment, includ-
2 ing but not limited to the Clean Water Act, the Safe
3 Drinking Water Act, the Comprehensive Environ-
4 mental Response, Compensation, and Liability Act,
5 Resource Conservation and Recovery Act, and the
6 regulations implementing such Acts;

7 (2) affects the ability of the United States to
8 take actions acting in its capacity as trustee for any
9 other Indian tribe or allottee;

10 (3) confers jurisdiction on any State court to—

11 (A) interpret Federal law regarding health,
12 safety, or the environment or determine the du-
13 ties of the United States or other parties pursu-
14 ant to such Federal law; or

15 (B) conduct judicial review of Federal
16 agency action; or

17 (4) waives any claim of a member of the Band
18 in an individual capacity that does not derive from
19 a right of the Band.

20 (e) TOLLING OF CLAIMS.—

21 (1) IN GENERAL.—Each applicable period of
22 limitation and time-based equitable defense relating
23 to a claim described in this section shall be tolled for
24 the period beginning on the date of enactment of
25 this Act and ending on the earlier of—

1 (A) December 31, 2015; or

2 (B) the enforceability date.

3 (2) EFFECTS OF SUBSECTION.—Nothing in this
4 subsection revives any claim or tolls any period of
5 limitation or time-based equitable defense that ex-
6 pired before the date of enactment of this Act.

7 (3) LIMITATION.—Nothing in this section pre-
8 cludes the tolling of any period of limitations or any
9 time-based equitable defense under any other appli-
10 cable law.

11 (f) ENFORCEABILITY DATE.—The enforceability date
12 shall be the date on which the Secretary publishes in the
13 Federal Register a statement of findings that—

14 (1) the Pechanga Settlement Agreement has
15 been approved by the Adjudication Court;

16 (2) all funds authorized by this Act for such
17 purpose have been deposited in the Pechanga Settle-
18 ment Fund;

19 (3) the waivers and releases authorized in sub-
20 section (a) have been executed by the Band and the
21 Secretary; and

22 (4) the Extension of Service Area Agreement
23 has been approved and executed by all parties there-
24 to and is effective and enforceable in accordance
25 with its terms.

1 **SEC. 8. WATER FACILITIES.**

2 (a) IN GENERAL.—The Secretary shall, subject to the
3 availability of appropriations, using funds from the des-
4 ignated accounts of the Pechanga Settlement Fund, pro-
5 vide the funds necessary to fulfill the Band’s obligations
6 under the Recycled Water Infrastructure Agreement and
7 the ESAA Capacity Agreement, in an amount not to ex-
8 ceed the amounts deposited in the designated accounts for
9 such purposes, in accordance with this Act and the terms
10 and conditions of such agreements.

11 (b) NON-REIMBURSABILITY.—The funds provided by
12 the Secretary pursuant to subsection (a) shall be non-re-
13 imburseable.

14 (c) RECYCLED WATER INFRASTRUCTURE.—

15 (1) IN GENERAL.—The Secretary shall, using
16 funds from the Pechanga Recycled Water Infra-
17 structure Account, provide funds for the Storage
18 Pond and the Demineralization and Brine Disposal
19 Project in accordance with this section.

20 (2) STORAGE POND.—The Secretary shall, sub-
21 ject to the availability of appropriations, provide the
22 funding necessary to fulfill the Band’s obligations
23 under the Recycled Water Infrastructure Agreement
24 for the design and construction of the Storage Pond,
25 in an amount not to exceed \$2,500,000, such
26 amount to be adjusted for changes since June 30,

1 2009, in construction costs as indicated by engineer-
2 ing cost indices applicable to types of construction
3 required to design and construct the Storage Pond.

4 (3) The procedure for the Secretary to provide
5 funds pursuant to this section shall be as set forth
6 in the Recycled Water Infrastructure Agreement.

7 (4) The Bureau of Reclamation shall be the
8 lead agency for purposes of the implementation of
9 this section.

10 (5) The United States shall have no responsi-
11 bility or liability for the Storage Pond to be designed
12 and constructed by RCWD.

13 (6) In the event that RCWD does not submit
14 the Storage Pond Notice to the Band within 3 years
15 after the enforceability date, the funds set aside
16 within the Pechanga Recycled Water Infrastructure
17 Account, including any interest that has accrued
18 thereon, for purposes of the design and construction
19 of the Storage Pond shall revert to the United
20 States Treasury.

21 (7) DEMINERALIZATION AND BRINE DISPOSAL
22 PROJECT.—Upon receipt of a written request from
23 the Band pursuant to section 5(c) of the Recycled
24 Water Infrastructure Agreement, the Secretary, act-
25 ing through the Bureau of Reclamation, shall enter

1 into negotiations with RCWD and the Band to es-
2 tablish an agreement that will allow the Bureau of
3 Reclamation to make payment directly to RCWD in
4 the amount below. Upon execution of said agreement
5 the Secretary shall, subject to the availability of ap-
6 propriations, provide the funding necessary to fulfill
7 the Band's obligations under the Recycled Water In-
8 frastructure Agreement for the design and construc-
9 tion of the Demineralization and Brine Disposal
10 Project, in an amount not to exceed \$4,460,000,
11 such amount to be adjusted for changes since June
12 30, 2009, in construction costs as indicated by engi-
13 neering cost indices applicable to types of construc-
14 tion required to design and construct the
15 Demineralization and Brine Disposal Project.

16 (d) ESAA DELIVERY CAPACITY.—

17 (1) IN GENERAL.—The Secretary shall, using
18 funds from the Pechanga ESAA Delivery Capacity
19 Account, provide funds for Interim Capacity and
20 Permanent Capacity in accordance with this section.

21 (2) INTERIM CAPACITY.—The Secretary shall,
22 subject to the availability of appropriations, using
23 funds from the ESAA Delivery Capacity Account,
24 provide the funding necessary to fulfill the Band's
25 obligations under the ESAA Capacity Agreement for

1 the provision by RCWD of Interim Capacity to the
2 Band in an amount not to exceed \$1,000,000.

3 (3) PERMANENT CAPACITY.—Upon receipt of
4 the Permanent Capacity Notice pursuant to section
5 5(b) of the ESAA Capacity Agreement, the Sec-
6 retary, acting through the Bureau of Reclamation,
7 shall enter into negotiations with RCWD and the
8 Band to establish an agreement that will allow for
9 the disbursement of funds from the Pechanga ESAA
10 Delivery Capacity Account in the amount below.
11 Upon execution of said agreement the Secretary
12 shall, subject to the availability of appropriations,
13 using funds from the ESAA Delivery Capacity Ac-
14 count, provide the funding necessary to fulfill the
15 Band’s obligations under the ESAA Capacity Agree-
16 ment for the provision by RCWD of Permanent Ca-
17 pacity to Pechanga in an amount not to exceed
18 \$16,900,000, such amount to be adjusted for
19 changes since June 30, 2009, in construction costs
20 as indicated by engineering cost indices applicable to
21 types of construction required to design and con-
22 struct the Permanent Capacity.

23 (e) PROCEDURE.—The procedure for the Secretary to
24 provide funds pursuant to this section shall be as set forth
25 in the ESAA Capacity Agreement.

1 (f) LEAD AGENCY.—The Bureau of Reclamation
2 shall be the lead agency for purposes of the implementa-
3 tion of this section.

4 (g) LIABILITY.—The United States shall have no re-
5 sponsibility or liability for the Permanent Capacity to be
6 provided by RCWD.

7 (h) AVAILABILITY OF FUNDS FOR CERTAIN PUR-
8 POSE.—In the event that RCWD does not provide the Per-
9 manent Capacity Notice required pursuant to the ESAA
10 Capacity Agreement within 5 years after the enforceability
11 date, the funds set aside in the Pechanga ESAA Delivery
12 Capacity Account, including any interest that has accrued
13 thereon, for purposes of the provision of Permanent Ca-
14 pacity shall be available for use by the Band to provide
15 alternative permanent capacity in a manner that is similar
16 to the Permanent Capacity that the Band would have re-
17 ceived had RCWD provided such Permanent Capacity.

18 **SEC. 9. PECHANGA SETTLEMENT FUND.**

19 (a) ESTABLISHMENT.—There is established in the
20 Treasury of the United States the Pechanga Settlement
21 Fund, consisting of such amounts as are deposited in the
22 fund under subsections (a)(1), (a)(2), and (a)(3) of section
23 11.

1 (b) ACCOUNTS OF PECHANGA SETTLEMENT
2 FUND.—The Secretary shall establish in the Pechanga
3 Settlement Fund the following accounts:

4 (1) Pechanga Recycled Water Infrastructure
5 Account, consisting of amounts authorized pursuant
6 to section 11(a)(1).

7 (2) Pechanga ESAA Delivery Capacity Account,
8 consisting of amounts authorized pursuant to section
9 11(a)(2).

10 (3) Pechanga Water Fund Account, consisting
11 of amounts authorized pursuant to section 11(a)(3).

12 (c) DEPOSITS TO PECHANGA SETTLEMENT FUND.—

13 (1) IN GENERAL.—The Secretary of the Treas-
14 ury shall promptly deposit in the Pechanga Settle-
15 ment Fund any amounts appropriated for that pur-
16 pose.

17 (2) DEPOSITS TO ACCOUNTS.—The Secretary of
18 the Treasury shall deposit amounts in the accounts
19 of the Pechanga Settlement Fund established under
20 subsection (b).

21 (d) MANAGEMENT.—

22 (1) IN GENERAL.—The Secretary shall manage
23 the Pechanga Settlement Fund, make investments
24 from the Pechanga Settlement Fund, and make
25 monies available from the Pechanga Settlement

1 Fund for distribution to the Band consistent with
2 the American Indian Trust Fund Management Re-
3 form Act of 1994 (25 U.S.C. 4001 et seq.) (referred
4 to in this subsection as the “Trust Fund Reform
5 Act”).

6 (2) INVESTMENT OF PECHANGA SETTLEMENT
7 FUND.—Upon the enforceability date the Secretary
8 shall invest amounts in the Pechanga Settlement
9 Fund in accordance with—

10 (A) the Act of April 1, 1880 (25 U.S.C.
11 161);

12 (B) the first section of the Act of June 24,
13 1938 (25 U.S.C. 162a);

14 (C) the obligations of Federal corporations
15 and Federal Government-sponsored entities the
16 charter documents of which provide that the ob-
17 ligations of the entities are lawful investments
18 for federally managed funds, including—

19 (i) the obligations of the United
20 States Postal Service described in section
21 2005 of title 39, United States Code;

22 (ii) bonds and other obligations of the
23 Tennessee Valley Authority described in
24 section 15d of the Tennessee Valley Au-
25 thority Act of 1933 (16 U.S.C. 831n–4);

1 (iii) mortgages, obligations, and other
2 securities of the Federal Home Loan Mort-
3 gage Corporation described in section 303
4 of the Federal Home Loan Mortgage Cor-
5 poration Act (12 U.S.C. 1452); and

6 (iv) bonds, notes, and debentures of
7 the Commodity Credit Corporation de-
8 scribed in section 4 of the Act of March 8,
9 1938 (15 U.S.C. 713a-4); and

10 (D) the obligations referred to in section
11 201 of the Social Security Act (42 U.S.C. 401).

12 (3) DISTRIBUTIONS FROM PECHANGA SETTLE-
13 MENT FUND.—

14 (A) IN GENERAL.—Funds from the
15 Pechanga Settlement Fund shall be used for
16 each purpose described in subparagraphs (B)
17 through (D).

18 (B) PECHANGA RECYCLED WATER INFRA-
19 STRUCTURE ACCOUNT.—The Pechanga Recy-
20 cled Water Infrastructure Account shall be used
21 for expenditures by the Band in accordance
22 with section 8(c).

23 (C) PECHANGA ESAA DELIVERY CAPACITY
24 ACCOUNT.—The Pechanga ESAA Delivery Ca-

1 capacity Account shall be used for expenditures
2 by the Band in accordance with section 8(d).

3 (D) PECHANGA WATER FUND ACCOUNT.—

4 The Pechanga Water Fund Account shall be
5 used for—

6 (i) payment of the EMWD Connection
7 Fee;

8 (ii) payment of the MWD Connection
9 Fee; and

10 (iii) any expenses, charges, or fees in-
11 curred by the Band in connection with the
12 delivery or use of water pursuant to the
13 Pechanga Settlement Agreement.

14 (4) WITHDRAWALS BY BAND.—

15 (A) IN GENERAL.—The Band may with-
16 draw any portion of amounts in the Pechanga
17 Settlement Fund on approval by the Secretary
18 of a tribal management plan in accordance with
19 the Trust Fund Reform Act.

20 (B) REQUIREMENTS.—

21 (i) IN GENERAL.—In addition to the
22 requirements under the Trust Fund Re-
23 form Act, the tribal management plan of
24 the Band under subparagraph (A) shall re-
25 quire that the Band spend any amounts

1 withdrawn from the Pechanga Settlement
2 Fund in accordance with this Act.

3 (ii) ENFORCEMENT.—The Secretary
4 may carry out such judicial or administra-
5 tive actions as the Secretary determines to
6 be necessary to enforce a tribal manage-
7 ment plan to ensure that amounts with-
8 drawn by the Band from the Pechanga
9 Settlement Fund under this paragraph are
10 used in accordance with this Act.

11 (C) LIABILITY.—The Secretary and the
12 Secretary of the Treasury shall not be liable for
13 the expenditure or investment of amounts with-
14 drawn from the Pechanga Settlement Fund by
15 the Band under this paragraph.

16 (D) EXPENDITURE PLAN.—

17 (i) IN GENERAL.—For each fiscal
18 year, the Band shall submit to the Sec-
19 retary for approval an expenditure plan for
20 any portion of the amounts described in
21 subparagraph (A) that the Band elects to
22 withdraw under this paragraph during the
23 fiscal year.

24 (ii) INCLUSION.—An expenditure plan
25 under clause (i) shall include a description

1 of the manner in which, and the purposes
2 for which, funds of the Band remaining in
3 the Pechanga Settlement Fund will be
4 used during subsequent fiscal years.

5 (iii) APPROVAL.—On receipt of an ex-
6 penditure plan under clause (i), the Sec-
7 retary shall approve the plan if the Sec-
8 retary determines that the plan is—

9 (I) reasonable; and

10 (II) consistent with this Act.

11 (5) ANNUAL REPORTS.—The Band shall submit
12 to the Secretary annual reports describing each ex-
13 penditure by the Band of amounts in the Pechanga
14 Settlement Fund during the preceding calendar
15 year.

16 (6) CERTAIN PER CAPITA DISTRIBUTIONS PRO-
17 HIBITED.—No amount in the Pechanga Settlement
18 Fund shall be distributed to any member of the
19 Band on a per capita basis.

20 (e) AVAILABILITY.—The amounts in the Pechanga
21 Settlement Fund shall be available for use by the Sec-
22 retary and withdrawal by the Band beginning on the en-
23 forceability date.

1 **SEC. 10. MISCELLANEOUS PROVISIONS.**

2 (a) WAIVER OF SOVEREIGN IMMUNITY BY THE
3 UNITED STATES.—Except as provided in subsections (a)
4 through (c) of section 208 of the Department of Justice
5 Appropriation Act, 1953 (43 U.S.C. 666), nothing in this
6 Act waives the sovereign immunity of the United States.

7 (b) OTHER TRIBES NOT ADVERSELY AFFECTED.—
8 Nothing in this Act quantifies or diminishes any land or
9 water right, or any claim or entitlement to land or water,
10 of an Indian tribe, band, or community other than the
11 Band.

12 (c) LIMITATION ON CLAIMS FOR REIMBURSEMENT.—
13 With respect to Indian land within the Reservation—

14 (1) the United States shall not submit against
15 any Indian-owned land located within the Reserva-
16 tion any claim for reimbursement of the cost to the
17 United States of carrying out this Act and the
18 Pechanga Settlement Agreement; and

19 (2) no assessment of any Indian-owned land lo-
20 cated within the Reservation shall be made regard-
21 ing that cost.

22 (d) EFFECT ON CURRENT LAW.—Nothing in this
23 section affects any provision of law (including regulations)
24 in effect on the day before the date of enactment of this
25 Act with respect to preenforcement review of any Federal
26 environmental enforcement action.

1 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) AUTHORIZATION OF APPROPRIATIONS.—

3 (1) PECHANGA RECYCLED WATER INFRASTRUC-
4 TURE ACCOUNT.—There is authorized to be appro-
5 priated \$6,960,000, such amount to be adjusted for
6 changes since June 30, 2009, in construction costs
7 as indicated by engineering cost indices applicable to
8 types of construction required to design and con-
9 struct the Storage Pond and the Demineralization
10 and Brine Disposal Project for deposit into the
11 Pechanga Recycled Water Infrastructure Account.

12 (2) PECHANGA ESAA DELIVERY CAPACITY AC-
13 COUNT.—There is authorized to be appropriated
14 \$17,900,000, such amount to be adjusted for
15 changes since June 30, 2009, in construction costs
16 as indicated by engineering cost indices applicable to
17 types of construction required to provide the Interim
18 Capacity and the Permanent Capacity for deposit
19 into the Pechanga ESAA Delivery Capacity Account.

20 (3) PECHANGA WATER FUND ACCOUNT.—There
21 is authorized to be appropriated \$25,382,000 for de-
22 posit into the Pechanga Water Fund Account for the
23 purposes set forth in section 9(d)(3)(D).

24 **SEC. 12. REPEAL ON FAILURE OF ENFORCEABILITY DATE.**

25 If the Secretary does not publish a statement of find-
26 ings under section 7(f) by December 31, 2015—

1 (1) this Act is repealed effective January 1,
2 2016, and any action taken by the Secretary and
3 any contract or agreement pursuant to the authority
4 provided under any provision of this Act shall be
5 void;

6 (2) any amounts appropriated under section 11
7 together with any interest on those amounts, shall
8 immediately revert to the general fund of the Treas-
9 ury; and

10 (3) any amounts made available under section
11 11 that remain unexpended shall immediately revert
12 to the general fund of the Treasury.

○